



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,329	04/25/2000	Randolph A. Stern	STAN-09RE	9722
26875 7590 03/17/2009 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER JUSKA, CHERYL ANN	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 03/17/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* Randolph A. Stern and Michael N. Byles

---

Reissue 09/558,329  
Patent 5,902,757  
Technology Center 1700

---

Mailed: March 17, 2009

---

Before *Lynn M. Kryza, Deputy Chief Trial Administrator.*

ORDER RETURNING UNDOCKETED APPEAL

This reissue application was electronically received by the Board of Patent Appeals and Interferences on January 12, 2009. A review of the reissue application revealed that it is not ready for docketing as an appeal. Accordingly, the reissue application is herewith being returned to the

Examiner to address the following matter(s) requiring attention prior to docketing.

The amendments are not in compliance with 37 C.F.R. § 1.173. All amendments to the original patent claims should show any additions with underlining and deletions with bracketing, with respect to the original patent text. No strikeout is permitted in a reissue application. The Claim Appendix should also include all markings pursuant to 37 C.F.R. § 1.173.

The amendments dated May 03, 2005, and February 06, 2006, do not appear to have been accompanied by a supplemental reissue declaration. Whenever claims are amended or added, a supplemental reissue declaration is required pursuant to MPEP 1414.01. Form PTO/SB/51S, “Supplemental Declaration For Reissue Patent Application To Correct ‘Errors’ Statement ([see] 37 C.F.R. § 1.175(b)(1)),” may be used to prepare a supplemental reissue declaration. Form PTO/SB/51S serves to indicate that every error in the patent that was corrected in the reissue application, but was not covered by a prior reissue oath/declaration submitted in the reissue application, arose without any deceptive intention on the part of the applicant.

Although a declaration was filed with the Request for Continued Examination (RCE) of May 03, 2005, it does not appear to be signed by all of the inventors, and it does not appear to be a proper reissue declaration. In a broadening reissue application, all supplemental reissue declarations must be signed by all inventors. See MPEP 1414.01(III). 37 C.F.R. § 1.175(b)(1) taken in conjunction with Section 1.172, requires a supplemental reissue declaration be signed by all of the inventors.

It does not appear that the Examiner has included in an Office action the appropriate rejection of all the reissue claims under 35 U.S.C. 251, as

being based upon a defective reissue declaration, and the requirement of a supplemental reissue declaration signed by all of the inventors to overcome such rejection.

## CONCLUSION

Accordingly, it is

ORDERED that the above identified Reissue application be returned to the Examiner for

- 1.) requiring correction of all amended and new claims, to be in compliance with 37 CFR 1.173;
- 2.) requiring a corrected Claim Appendix in compliance with 37 C.F.R. § 1.173;
- 3.) requiring submission of a proper supplemental reissue declaration to overcome the rejection of all the reissue claims under 35 U.S.C. 251, as being based upon a defective reissue declaration ; and
- 4.) for such other action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

LMK/rvb

Reissue 09/558,329  
Patent 5,902,757

Wood, Herron & Evans, LLP  
2700 Carew Tower  
441 Vine Street  
Cincinnati, OH 45202